MEMORANDUM

To: Representative Fred Love, Co-Chair
Senator Linda Chesterfield, Co-Chair
Desegregation Litigation Oversight Committee

From: Rosalyn Middleton, Assistant Attorney General

Date: December 14, 2015

RE: Pulaski County and Garland County Desegregation Cases

This memorandum was prepared in response to Mr. Isaac Linam's email dated December 7, 2015, requesting that the Office of Attorney General Leslie Rutledge provide the Subcommittee a status update on the Pulaski County and Garland County desegregation cases. This memorandum provides an update with regard to the desegregation cases involving Pulaski County, *Little Rock School District v. Pulaski County Special School District*, Case No. 4:82-CV-00866-DPM, and Garland County, *W. T. Davis v. Hot Springs School District*, Case No. 6:89-CV-06088-RTD.

I. Pulaski County Litigation

A. Background

In 1982, each of the three school districts located in Pulaski County were subject to separate desegregation orders.[1] Over the years, the Pulaski County Special School District (PCSSD) and North Little Rock School District (NLRSD) made little if any effort to comply with their orders. [2] On November 30, 1982, the Little Rock School District (LRSD) filed suit asserting its desegregation efforts were being hindered by the unconstitutional and racially discriminatory acts of the State Board of Education (State Board), PCSSD, and NLRSD.[3] LRSD also

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[1] *See Little Rock School District v. Pulaski County Special School District No. 1*, 584 F. Supp. 328 (E.D. Ark. 1984). At the time, the Little Rock School District was subject to orders issued in *Clark v. Board of Education and the Little Rock School District*, Case No. 82-1834. The North Little Rock School District was subject to orders issued in *Davis v. Board of Education of North Little Rock, Ark. Sch. District*, Case No. LR-68-C-157. The Pulaski County Special School District was subject to orders issued in *Zinnamon v. Board of Education of the Pulaski County Arkansas Special School District*, Case No. LR-68-C-154.

[2] 584 F. Supp. at pp. 336-339, 345-349.

[3] 597 F. Supp. 1220 (E.D. Ark. Nov. 19, 1984); 584 F. Supp. 328, 353 (E.D. Ark. Apr. 13, 1984).

asserted that the effects of the unconstitutional and discriminatory acts could only be remedied by the consolidation of the three school districts.[4]

The district court separated the liability and remedy phases of the litigation.[5] In an ordered dated April 13, 1984, the district court issued its decision as to the liability of the State Board, PCSSD, and NLRSD.[6] The district court found that the State Board, PCSSD, and NLRSD had engaged in unconstitutional and racially discriminatory acts that had substantial "interdistrict segregative effects" on education in each of the Pulaski County school districts.[7] The district court also found that the only way to remedy the effects of the unconstitutional acts was by consolidating the three school districts.[8]

During the remedial phase of the litigation, the district court received evidence regarding various plans for accomplishing the consolidation.[9] It was during this phase of the litigation that the Joshua Intervenors and Knight Intervenors were allowed to intervene.

Following the remedial phase, the district court's decision was appealed to the United States Court of Appeals for the Eighth Circuit. In a May 29, 1986, opinion, the Court of Appeals affirmed the district court's ruling with respect to the liability of the State Board, PCSSD, and NLRSD.[10] The Court of Appeals also agreed with the district court's finding that the unconstitutional actions of the State Board, PCSSD, and NLRSD justified an interdistrict remedy.[11] However, the Court of Appeals did not agree with the district court's finding that consolidation was the only remedy.[12] The Court of Appeals specifically held that: (1) consolidation exceeded the scope of the violation; (2) other remedial measures were better designed to restore the victims of segregation in the Pulaski County schools to the position they would have occupied absent the unconstitutional discriminatory conduct; and (3) consolidation failed to preserve the districts' interest in managing their own affairs.[13]

The Court of Appeals remanded the case back to the district court with directions to modify its remedy to embody the following principals:[14]

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[4] *597 F. Supp.* at p. 1220.
[5] 778 F.2d 404, 408 (8th Cir. 1985).
[6] 778 F.2d at 408.
[7] 597 F. Supp. at p. 1220; 584 F. Supp. 328, 353 (E.D. Ark. Apr. 13, 1984).
[8] 584 F. Supp. at p. 351.
[9] 584 F. Supp. 352.
[10] 778 F.2d 404, 427 (8th Cir. 1985).
[11] 778 F.2d at 433.
[12] 778 F.2d at 433-34.
[13] 778 F.2d at 434.
[14] *See* 778 F.2d at pp. 434-436.

1. Each school district remaining independent with an elected school board with its own administrative structure and powers of taxation.
2. The boundaries of the NLRSD remaining as they then existed and the NLRSD correcting the constitutional violation found by the district court.
3. Adjusting the boundaries between PCSSD and LRSD as follows:

    (a) All land within the City of Little Rock being assigned to LRSD, and the students living in those areas being assigned to schools in LRSD.
    (b) All land in the Granite Mountain area being included in PCSSD, and the students living in that area being assigned to schools in PCSSD.
    (c) In lieu of the adjustments indicated in (a) and (b), the district court, upon application by a party to this appeal, could conduct evidentiary hearings to determine whether adjustments other than those indicated in (a) and (b) would have substantially the same impact on the student populations of each district and would better meet the educational needs of the students of the districts involved. After such hearings, the district court could make adjustments to the boundaries other than those indicated above if it found that they would better meet the educational needs of the students, and would remedy the constitutional violations to the same extent as the adjustments in (a) and (b).

4. After the adjustment of the boundaries between LRSD and PCSSD, the attendance zones of each school district would be revised to reflect the racial composition of the district.
5. The participation of all three school districts in a voluntary intra- or interdistrict majority-to-minority transfers program, with the State of Arkansas funding the cost of transporting students

opting for interdistrict transfers and paying benefits to the sending and receiving schools for the interdistrict transfers.

6. The establishment of a limited number of magnet or specialty schools or programs with the State of Arkansas paying the customary state aid to any pupils attending those schools, plus an additional one-half of the cost of educating the students attending them. The state was also required to pay one-half of the cost of the construction or rehabilitation necessary for housing the magnet schools and the full cost of transporting the students who attended them.
7. Consideration of PCSSD's cooperative programs proposals.
8. If the boundary changes resulted in PCSSD or LRSD losing a substantial portion of their tax bases, the district court could consider measures to equalize the tax rates in the districts.

After years of back and forth over various aspects of the desegregation plan, in 1989 the State and the three school districts entered into a settlement agreement "the 1989 Settlement Agreement". The 1989 Settlement Agreement, however, was not approved by the district court until June 21, 1991.[15]

On March 26, 2012, the State filed a Motion for Release from the 1989 Settlement Agreement.[16] The parties, subsequently, reached an agreement "the 2013 Settlement Agreement" resolving the State's Motion for Release.[17] The district court entered an order approving the 2013 Settlement Agreement on January 13, 2014.[18]

B. The 2013 Settlement Agreement

The 2013 Settlement Agreement provides, in pertinent part:

C. <u>State's Payments Under this Agreement</u>:

[15] 769 F. Supp. 1483 (E.D. Ark. June 21, 1991).
[16] Docket Entry No. 4937.
[17] Docket Entry No. 4937.
[18] Docket Entry 4980.

1. The State and Districts will make all payments currently scheduled for the 2013-14 school year. Any and all payment obligations of all Parties not pertaining to the 2013-14 school year, to or with all other Parties, under the 1989 Settlement Agreement, prior agreements and orders in this Litigation will cease as of June 30, 2014.

2. Thereafter, the State shall make payments to the Districts each school year in eleven equal installments on a schedule to be determined, which total the following amounts:

2014-2015: Year 1	LRSD = $37,347,429 NLRSD = $7,642,338 PCSSD = $20,804,500
2015-2016: Year 2	LRSD = $37,347,429 NLRSD = $7,642,338 PCSSD = $20,804,500
2016-2017: Year 3	LRSD = $37,347,429 NLRSD = $7,642,338 PCSSD = $20,804,500

3. In Year 4 (the 2017-2018 school year), the State shall make payments to the Districts that shall only be used for academic facilities construction projects as defined in Arkansas Code Annotated § 6-20-2502(2) (Repl. 2013). These payments will be made in the 2017-18 school year in eleven equal installments on a schedule to be determined and will total the following amounts:

2017-2018: Year 4	LRSD = $37,347,429 NLRSD = $7,642,338 PCSSD = $20,804,500

4. The restriction on the use of the Year 4 payments shall not apply to the extent that the Districts have certified to the Arkansas Department of Education the expenditures for academic facilities construction projects that were paid from District funds in Years 1-3 (2014-2017).

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9. LRSD, NLRSD, and PCSSD shall each receive $250,000 for reimbursement of legal fees within ninety days of this Agreement being approved by the District Court. The State stipulates that Joshua Intervenors and the Knight Intervenors are prevailing parties as to the State with regard to certain motions filed subsequent to the 1989 Settlement Agreement that Joshua joined and which were successful against the State and are entitled to reasonable attorney's fees, in the amount of $500,000 for the Joshua Intervenors and in the amount of $75,000 for the Knight Intervenors.[19]

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D. <u>State's Obligations to Terminate</u>

1. Except as specifically provided in this Agreement, any and all of the State's obligations imposed pursuant to, under the guise of, or in any way related to this Litigation shall forever cease upon execution of this Agreement. As of the last payment under this Agreement, any and all of the State's obligations under this Agreement shall forever cease.

2. The Parties to this Litigation hereby with the execution of this Agreement waive, release, relinquish, and forever discharge the State of Arkansas from any and all federal or state claims, liens, or causes of action, obligation, or liability, known or unknown arising prior to the date of this Agreement, that they have or may have against the State of Arkansas arising out of any claims that were or could have been made in connection with this Litigation or the 1989 Settlement Agreement. The released claims shall specifically include, but not be limited to, any

[19] The Joshua Intervenors subsequently sought to recover attorney's fees in the amount of $3,300,000. (Docket Entry No. 5095). The district court entered an order on April 2, 2015 awarding the Joshua Intervenors attorney's fees in the amount of $785,355.

claims for damages, injunctive relief, declaratory relief, attorneys' fees, costs or recovery of any type, against the State of Arkansas including any officers, officials, employees and agents of the State of Arkansas, in their official or individual capacities. In no event shall any party to this Agreement be entitled to any desegregation related payments from the State of Arkansas in excess of those provided for in this Agreement.

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E. <u>Jacksonville/North Pulaski Area School District</u>

1. The State and the Districts agree that the State may immediately authorize the creation of a Jacksonville/North Pulaski area school district consistent with state law. Any successor district or newly created school district in Pulaski County shall be considered a party to and bound by this Agreement. The State and the Districts do not object to the creation of a Jacksonville/North Pulaski area school district. The State will oppose the creation of any other school districts from PCSSD's territory until PCSSD is declared fully unitary and is released from federal court supervision.

C. Current Status of the Case

1. Unitary Status

PCSSD is the only school district that has yet to achieve full unitary status. LRSD was declared fully unitary on February 23, 2007.[20] NLRSD was declared fully unitary on May 29, 2012.[21]

2. Detachment of the Jacksonville/North Pulaski School District

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[20] 2007 WL 624054 (E.D. Ark. Feb. 23, 2007) *affirmed* 561 F.3d 746 (8th Cir. 2009).
[21] Docket Entry No. 4758.

On November 13, 2014, the State Board approved the creation of the Jacksonville/North Pulaski School District (JNPSD).[22] Per the terms of the 2013 Settlement Agreement, JNPSD is "a party to and bound by the 2013 Settlement Agreement."[23] JNPSD also assumes PCSSD's entire desegregation obligation in the establishment and operation of the new district. JNPSD, however, is not a party to the Pulaski County lawsuit.[24] On October 14, 2015, the district court entered an order approving the desegregation aspects of the detachment. A status conference is scheduled for December 16, 2015 at 1:30.

II. Garland County

A. Background

There are seven school districts in Garland County-Hot Springs, Cutter Morning Star, Fountain Lake, Jessieville, Lakeside, Lake Hamilton, and Mountain Pine. The Garland County litigation was commenced on August 18, 1989, when a class action lawsuit was filed by W.T. Davis, a Garland County taxpayer, alleging that Garland County maintained a racially segregated public school system.[25] On behalf of the class, Mr. Davis sought an order consolidating the Garland County School Districts.[26] Following discovery and settlement negotiations, the parties reached an agreement on March 27, 1992 "The 1992 Settlement Agreement." [27]

B. "The 1992 Settlement Agreement"

In the 1992 Settlement Agreement, the school districts agreed to implement the School Choice Act of 1989.[28] According to the 1992 Settlement Agreement the implementation of the Public School Choice Act of 1989 on a county wide basis would facilitate the voluntary movement of minority students from the Hot Springs School District to any of the other districts in the county and the transfer of majority students in the county districts to the Hot Springs School District.[29] As part of the settlement, the State agreed to assist the districts with: (1) staff development; (2) curriculum development; (3) reducing the achievement gap; (4) developing programs and procedures designed to address the over-representation

[22] Docket Entry No. 5075.
[23] Docket Entry No. 5088.
[24] Docket Entry No. 5118.
[25] W.T. Davis v. Hot Springs School District, Case No. 6:89-CV-06088-RTD, (Docket Entry No. 194).
[26] Docket Entry No. 1.
[27] Docket Entry No. 80
[28] Docket Entry No. 80, p. 2.
[29] Docket Entry No. 80, p. 2.

of minority students in special education and the under-representation of minority students in gifted and talented education; (5) the development of programs to improve the relationship between students and teachers; (6) grants assistance; and (7) equity monitoring.[30] On April 28, 1992, the district court approved the 1992 Settlement Agreement.[31]

C. The Public School Choice Act of 1989

The Public School Choice Act of 1989 "1989 Act" provided, in pertinent part[32]:

> The provisions of this Act and all pupil choice options created hereby are subject to the following limitations:
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> > (a) No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in his resident district.
> > (b) In any instance where the foregoing provisions would result in a conflict with a desegregation court order, the terms of the order shall govern.

The race based limitations in the 1989 Act were declared unconstitutional in *Teague v. Ark. Bd. of Education*.[33] During the 2013 Legislative Session the Public School Choice Act of 1989 was repealed and replaced with the Public School Choice Act of 2013.[34]

Following the repeal of the 1989 Act, defendant school districts-- Cutter Morning Star, Fountain Lake, Jessieville, Lakeside, Lake Hamilton, and Mountain Pine filed a petition for declaratory relief seeking guidance from the district court regarding the 1992 Settlement Agreement.[35] On June 10, 2013, the district court entered an order finding that "the 1992 Settlement Agreement constitutes a court-approved desegregation plan that should remain in effect despite recent changes to the law on which the Settlement Agreement was partly based."[36]

D. Current Status of the Case

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[30] Docket Entry No. 80, pp. 3-4
[31] Docket Entry No. 82.
[32] *See* Act 609 of 1989, §11.
[33] 873 F. Supp. 2d 1055 (W.D. Ark. June 8, 2012).
[34] *See* Act 1227 of 2013, § 1. The 2013 Public School Choice Act has since been replaced by the 2015 Public School Choice Act. *See* Act 560 of 2015, § 2.
[35] Docket Entry No. 161.
[36] *See* Docket Entry No. 194 (March 31, 2015 Order quoting from the district court's June 10, 2013 Order (Docket Entry No. 168)).

On August 25, 2014, defendant school districts-- Cutter Morning Star, Fountain Lake, Jessieville, Lakeside, Lake Hamilton, and Mountain Pine filed a motion seeking to terminate the 1992 Settlement Agreement on the grounds that it was no longer just or equitable to apply the 1992 Settlement Agreement prospectively in light of the repeal of the 1989 Act.[37] In the State's response to the motion, the State requested to be released from its obligations under the 1992 Settlement Agreement.[38] In a March 31, 2015, Order denying the defendant school districts' Motion, the district court found that the defendant districts failed to establish that termination of the 1992 Settlement Agreement and relief from the district court's 1992 order were warranted.[39] The district court did not address the State's request for release.[40]

The defendant school districts have filed an appeal with the United States Court of Appeals for the Eighth Circuit. Because the district court did not rule on the State's request for relief, the State is not participating in the appeal.

[37] Docket Entry No. 175.
[38] Docket Entry No. 177.
[39] Docket Entry No. 194, p. 6.
[40] Docket Entry No. 194.